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ABSTRACT

The divorce explosion has placed a substantial burden on the judicial system of the United States. About 10 percent of divorce cases involve child custody battles. The adversarial legal process may be contrary to the children's best interest. Custody mediation has been used as an alternative to court litigation. California law requires an attempt to reach a settlement by mediation. This study surveyed participants in a mandatory California mediation court. Eleven complete sets of data from all session participants: clients (husband and wife), both attorneys, and mediator, were received. Client surveys focused on attitudes toward the mediation process and perception of attorney's attitudes. Attorneys were asked about their attitudes towards their clients and the mediation process. Mediators rated the effectiveness of the session, the cooperativeness of the clients, and if settlement was reached. Clients with positive attitudes, well informed and represented by attorneys with positive attitudes and high levels of experience with mediation court, were more likely to settle. This supports the importance of attorney's attitudes in facilitating the mediation process. Attorneys saw themselves as more helpful than the clients or mediators. Clients reported relatively high satisfaction with mediation, suggesting considerable satisfaction with the California process. Settlement rates were not finalized since further mediation sessions were expected. However, overall settlement rates were not expected to be significantly inferior to voluntary mediation participants. (ABL)

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ATTORNEY AND PARENT ATTITUDES RELATED TO SUCCESSFUL MEDIATION COUNSELING OF CHILD CUSTODY DISPUTES

Leland C. Swenson and D. Heinish

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ATTORNEY AND PARENT ATTITUDES RELATED TO SUCCESSFUL MEDIATION COUNSELING OF CHILD CUSTODY DISPUTES

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Over a million children are involved in divorce proceedings each year. Many professionals believe that the adversarial litigation for resolving custody may be harmful to children.

Nonadversary mediation is an alternative to litigation and is related to higher parent satisfaction and compliance. California law now requires mediation by trained counselors in "conciliation courts". Because parent settlement of custody disputes reduces conflicts likely to harm children this study was designed to identify factors related to settlements. Parents, their attorneys, and counselors involved in mediation at the Van Nuys offices of the Los Angeles County Superior Court were surveyed. Information was collected on subjects' self ratings, ratings of other mediation participants and gender factors.

A total of 112 completed survey forms were analyzed. Forty percent of parents reported reaching settlements. Attorneys were the most positive group (especially about their own inputs), followed by clients and mediators and means of all groups were in the positive range. Parents self-ratings of cooperativeness were significantly related to settlements as were greater attorney experience and information giving. The interaction between fathers ratings of attorney inputs and settlements was not significant but settling mothers rated the inputs of their attorneys significantly more positively. Fathers who rated attitudes of former spouses as positive had significantly higher settlement rates while mothers' ratings of the fathers' attitudes were not significantly related to settlements. Sex of attorney was a significant factor for mothers but not for fathers with mothers rating female attorneys as giving significantly more positive inputs. Male attorneys had more settlements.

Our identification of factors, including gender, related to settlement may lead to increasing rates of settlement and reduced stress on children caused by continued litigation.

ATTORNEY AND PARENT ATTITUDES RELATED TO SUCCESSFUL MEDIATION COUNSELING OF CHILD CUSTODY

L. Swenson, D. Heinish
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There is an increasing divorce trend in the United States. Since 1959 the divorce rate has more than tripled with over 50% of marriages ending in divorce. Sixty percent of these couples have children and over a million children are involved in divorce proceedings each year (Soloman, 1983).

This divorce "explosion" has placed a substantial burden on the judicial system of the United States. Nationwide over one half of trial court filings concern matrimonial actions. This burden is especially obvious when child custody is at issue and 10% of divorce cases end up in full scale legal battles over child custody (Pearson & Thoennes, 1984). Many professionals believe that the adversarial legal process for determining child custody may be harmful to the best interests of children, that it requires inappropriate delays before resolution of conflicts and that it is wasteful of judicial resources. Win-lose battles may tempt the parents to use the children against each other, increasing the trauma for the children. Lack of open communication between parents is a common result of an adversarial process leading to bitterness over custody decisions by the loser, poor environments for children, and much pain and expense for all involved (Schepard, Philbrick and Rabino, 1984).

One response has been increased use of nonadversary mediation services as an alternative to litigation. Data from a large scale study (the Denver Project) supports the view that

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* Other LMU Students substantially involved in data collection were M. Ruiz, D. Heinish, H. Hodge, J. Broehm, and J. D'Andrea. Thanks are due to S. Foran and other participating and cooperating mediators, to H. McIssac and the family law judges for their essential cooperation, to Professor T. Walsh and E. Reyes for invaluable help with the statistical analysis.

mediation results in lower relitigation rates and higher participant satisfaction compared with litigation alone (Pearson & Thoennes, 1982). However, these results may also be interpreted as reflecting a tendency of more cooperative parents to choose mediation. Rejection of voluntary mediation/ conciliation services by parents contesting custody averages around 50% (Pearson & Thoennes, 1984).

An alternative approach is to require mediation/ conciliation whenever child related issues arise prior to allowing judicial resolution of presented disputes. California requires mediation by trained counselors in "conciliation courts" which usually occupy facilities in Superior Court buildings. The requirement of mandatory mediation may reduce the effectiveness of such services by forcing mediation on unwilling clients. Attorneys may resent being forbidden to act as advocates for their clients. Schepard, et al, (1984) suggest that voluntary participants are more likely to mediate in good faith than parents first forced to mediate and then going through the adversarial process. Evarts and Goodwin (1984) state that individuals forced to be involved in mediation may refuse to cooperate, thus, surrendering their custody decisions to be settled in court.

However, the data presented by Pearson and Thoennes (1984) shows that leaving the decision to mediate up to the parents results in around 50% of those sets of parents opting for immedia access to litigation. This may not reflect an unwillingness to mediate by both parents of the set. Pearson and Thoennes (1982) report that when disputants rejected offers of voluntary mediation one of the spouses was usually eager to mediate and the other unwilling. Thus a voluntary mediation system may be undesirable because of unfairness to the parent desirin mediation, because of the stress it puts on family law court calendars and because of the increased probability of harmful effects on children and the litigating parents. Pearson and Thoennes (1984) report that 90 percent of their mediating subjects during their final interview were satisfied with the mediation process compared to a 50% satisfaction rate with the

courts found among those litigating either without mediation or after mediation. Therefore the California law passed in March of 1980 which requires parents to participate in mediation prior to litigating child related issues represents the lesser evil of forced mediation rather than the greater evil of no mediation. The 55% rate of successful mediations (those resulting in voluntary settlements) reported for the Los Angeles Conciliation Courts is not far inferior to the rate of 60% reported for voluntary mediators in the Denver project study conducted by Pearson and Thoennes (1984) and represents a positive response to the inadequacy of the adversary process (McIsaac, 1981).

It must be noted that the California law does not require the parents to reach a settlement during mediation and thus preserves individual choice and due process (Everts and Goodwin, 1984). The high rates of settlement reported for Los Angeles County represent a victory for private ordering over judicial ordering.

The present study addresses two areas of inquiry: 1] what are the factors related to parents reaching a settlement; and 2] is the assumption that involuntary participants should be less satisfied and reach fewer settlements warranted? In order to provide some answers to the first question we investigated the relationships between parents and mediators perceptions of attorney attitudes and inputs into the process and rates of settlement. We also investigated the relationship between amount of experience of participating attorneys in the process and settlement rates. In regard to the second question we measured satisfaction levels of male and female participants and rates of settlement. It was our intention to both compare our subjects to subjects in studies of voluntary mediation and to try to shed light on ways to make the California process more successful by collecting survey data regarding attitudes and experience of clients, attorneys and mediators at the Van Nuys offices of the Los Angeles County Conciliation Court. It was predicted that positive attorney attitudes as well as positive client attitudes would be significantly related to clients achieving settlements

and that amount of attorney experience with conciliation court would be positively related to settlements. Information on sex of clients and attorneys was collected with the intention of investigating both possible interactions between sex of client and attorney and sex differences of clients related to successful settlements. We also predicted rates of satisfaction and settlement comparable to that previously reported by Pearson and Thoennes (1984).

METHOD

Subjects:

A total of 48 clients (27 male, 21 female), 35 attorneys (10 male representing husband, 13 male representing wife, 6 female representing husband, and 6 female representing wife), and four female mediators (filling out a total of 29 survey forms) were surveyed. Roughly twice that number of client - attorney pairs were approached but no attempt was made to encourage participation of reluctant potential subjects in accordance with American Psychological Association Principles and judicial guidelines. Some information was collected from mediators regarding settlement rates among those participants approached but declining to fill out forms.

Materials:

One page survey forms were distributed to each subject. Most questions employed a 1 to 9 Likert scale with 1 being most positive. The client surveys focused on client attitudes toward the mediation process and client perceptions of the attitudes of their attorneys. They also asked how much information about the process was provided by the attorney and if the process was successful. The attorney were asked for information on their experience with, and attitude toward, the process and the nature and amount of information provided clients. They were also asked about their attitudes toward their clients. Mediators rated the effectiveness of the session, the perceived cooperativeness of the participants and if settlement was reached or not reached. Date, time of session, sex of participant and a session code was recorded on each form. An information/consent form was provided

to each subject and subjects were encouraged to fill out address information to allow subsequent debriefing by mail.

Procedures:

Data was collected at the Van Nuys Conciliation Court offices, Superior Court of Los Angeles County during most of 1985 and Spring 1986. The student research volunteers were trained at the Conciliation Court by Professor Leland Swenson or by experienced volunteers and briefed by Mediator Susan Foran. Survey forms were distributed to subjects by either the supervising professor or by Loyola Marymount University psychology students. Potential subjects were approached in the waiting rooms of the conciliation offices.

Forms were filled out by attorneys during or after their client's mediation session. Mediators were provided with a survey form for every such session. Clients and mediators filled out the foms after each session. Average time to fill out the forms was less than ten minutes. Forms were coded by date, time session and sex of participant but no names or other identifying information was recorded.

The experimenters were instructed to approach all potential participants with sensitivity to the often highly emotionally charged state of persons negotiating issues regarding children and custody. Subjects unwilling to fill out the forms at the Court but willing to respond at a later time were provided with survey forms, consent/information forms and an envelope addressed to Loyola Marymount. When possible the subjects were asked to fill out the forms on the spot as few mail returns were received. The information forms and student volunteers communicated that participation was purely voluntary.

RESULTS

Data Analysis and Statistical Procedures:

Refusals to participate led to our collecting only 11 complete sets of data from sessions (husband and wife, both attorneys, mediator) and use of data from incomplete sets resulted in differing "n"s for differing types of comparisons. "X^2s were calculated for category data and 2 X 2 X 3 (settlement-

no settlement, husband vs. wife, client, attorney, and mediator) factorial design ANOVAs were computed for each question found in parallel form on all three types of survey forms. Questions parallel on only two types of forms required similar 2 X 2 X 2 ANOVAs. A second set of ANOVAs with gender of attorney as a factor were also computed.

Overall Results:

Nineteen of the 48 participating clients reported settlements for a settlement rate of 40% within a single session. Responses to the nine point scales used for all questions except those requiring category responses the range of overall means for questions was from 2.31 to 3.77 showing a strong positive bias. As previously reported from pilot study data, attorneys tended to be the most positive group, followed by clients and mediators.

Significant Results by Individual Questions:

On questions related to attorneys encouraging clients to settle, the mediators were least positive (M= 3.63), the clients more positive (M= 2.79) and attorneys most positive (M= 1.91). The results of the ANOVA computation are as follows:

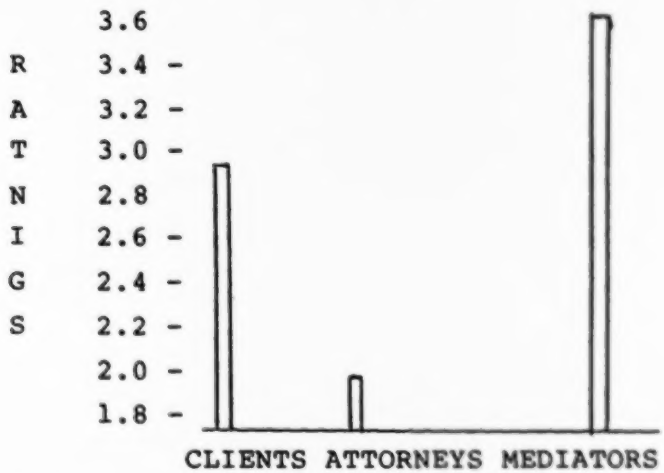

Table 1.1: STATISTICS
df: Between= 2 Within= 82
F Ratio= 5.52, P= .006

Figure 1.1: Mean ratings by Groups. 1= Most Positive.
First Question analyzed: Did attorney encourage settlement?

As Figure & Table 1.1 shows, there were significant differences between responding groups of subjects on the first

question. There was also a significant interaction between settlement- no settlement and sex of client. As Figure and Table 1.2 show, husbands participating in a successful settlement rated their attorneys as less encouraging (M= 3.60) than husbands not reaching settlement (M= 2.32). However, wives rated their attorneys as giving more encouragement when settlement was achieved (M= 2.32) than when it was not (M= 3.30).

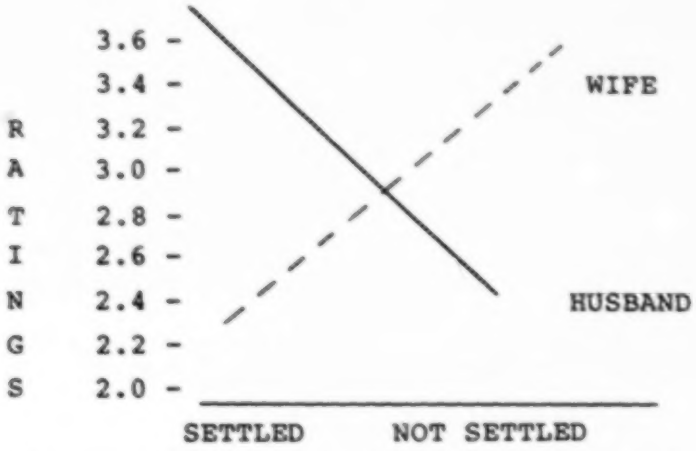

Table 1.2: STATISTICS
df: Between= 1, Within= 82
F Ratio= 4.26, P= .042

Figure 1.2: Two way interaction graph showing relation between client gender and settlements on first question. 1= Most Positive.

Question 2 asked the subjects if the attorneys presented the services of conciliation court in a favorable light. There were significant differences between groups of subjects as Figure and Table 1.3 show. Attorneys rated themselves as presenting the services in a significantly more favorable light (M= 1.62) than did clients (M= 2.32) and mediators (M= 3.00)

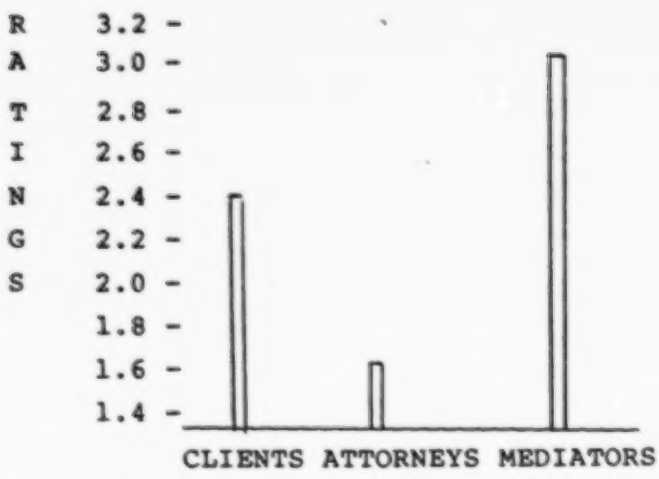

Table 1.3: STATISTICS
df: Between= 2, Within= 82
F Ratio= 10.78, P= .0001

Figure 1.3: Mean ratings by Groups. 1= Most Positive. All Groups second Question analyzed. Did Attorney present the services of the Conciliation Court in a favorable light?

The third question analyzed asked clients and attorneys how productive they thought the mediation session was or would be. As Figure and Table 1.4 show, subjects who settled significantly rated the mediation session as more productive (M= 2.41) than subjects not participating in settlements (M= 4.65).

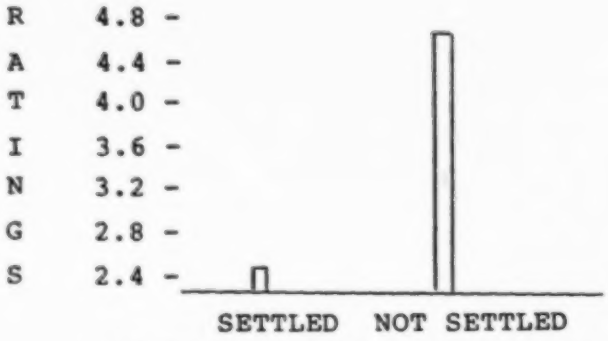

Table 1.4: STATISTICS
df: Between= 1 Within= 82
F Ratio= 36.69, P= .0001

Figure 1.4: Mean ratings by Settlement vs. Nonsettlement, 1= Most positive. Was (will be) this session productive? Third question analyzed for clients and attorneys.

The fourth question analyzed asked clients and attorneys if they would still use the mediation service if it was not compulsory. Figure and Table 1.5 show that both groups of

subjects were positive with lawyers significantly more positive (M= 1.67) than clients (M= 3.19).

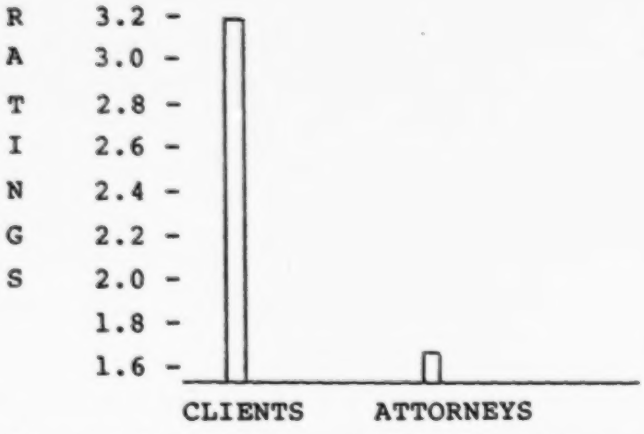

Table 1.5: STATISTICS
df: Between= 1, Within= 73
F = 10.24 P= .002

Figure 1.5: Mean ratings by Groups. 1= Most Positive. Fourth Question. Would you use the mediation services if they were voluntary?

The fifth question analyzed for Attorney and client subjects asked how well Conciliation Court procedures and rules served the particular clients interests. As Figure 1 and Table 1.6 show, subjects involved in settlements rated client's interests as better served (M= 2.18) than subjects not involved in settlements (M= 2.79). This difference approached significance.

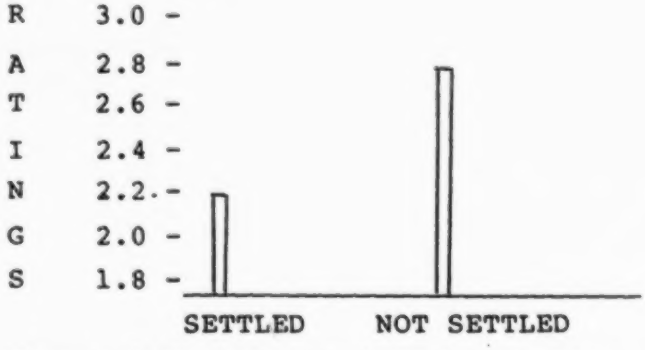

Table 1.6: STATISTICS
df: Between= 1 Within= 73
F Ratio= 3.68, P= .059

Figure 1.6: Mean ratings by Settled- Not Settled. 1= Most Positive. Fifth Question analyzed for Clients and Attorneys. How helpful do you think the present Conciliation Court procedures and rules are in serving this clients / my interests?

Attorneys ratings of how well client's interests were being served (M= 2.06) were highly significantly more positive than client's self ratings of how well those interests were served (M= 2.88). See Figure and Table 1.7.

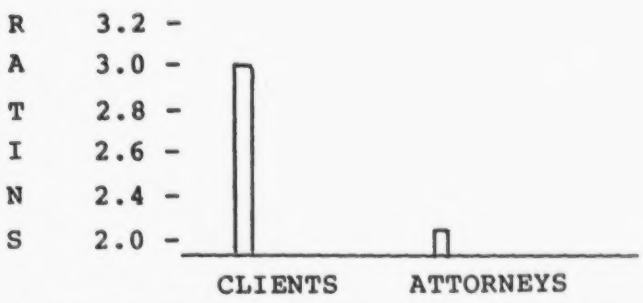

Table 1.7: STATISTICS
df: Between= 1 Within= 73
F Ratio= 7.84, P= .007

Figure 1.7: Mean ratings by Groups. 1= Most Positive. 5th Question. How well are client's interests served by Conciliation Court?

The interaction between type of subject and settlement on the fifth question was highly significant and suggests that settlements strongly influence client's perception of how well they are served but do not influence attorney's ratings. Attorneys' means were 2.00 with settlements and 2.04 without. Means for Clients involved in settlements were 2.04 and means for nonsettling clients were 3.52. See Figure and Table 1.8.

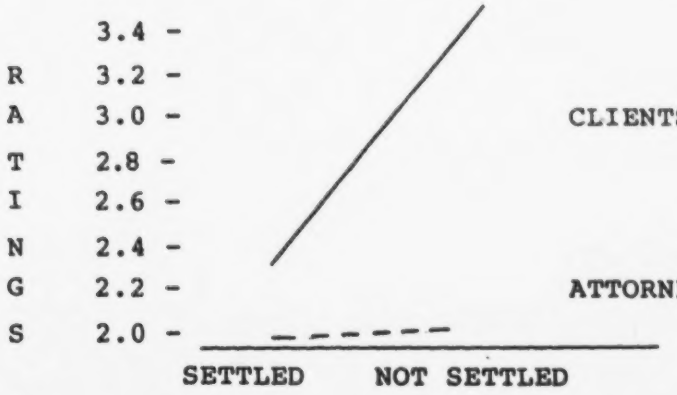

Table 1.8: STATISTICS
df: Between= 3 Within= 79
F Ratio= 6.15, P= .001

Figure 1.8: Interaction of Settled- Not Settled by Client- Attorney. 1= Most Positive. Fifth Question analyzed for Clients and Attorneys. How well are client's interests served by Conciliation Court?

The sixth question analyzed asked mediators and attorneys to rate the positiveness of the attitudes of husbands and wives. The raters concurred in rating wives as having significantly less positive attitudes (M= 4.26) than husbands (M= 3.26) as can be seen in Figure and Table 1.9.

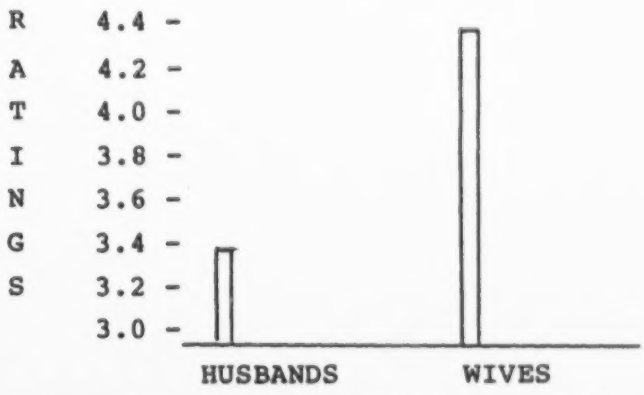

Table 1.9: STATISTICS
df: Between= 1 Within= 61
F Ratio= 5.07, P= .028

Figure 1.9: Mean ratings of attitudes of husbands and wives by attorneys and mediators. 1= Most Positive. Sixth question analyzed.

Clients rated as having more positive attitudes were significantly more likely to achieve settlements (M= 3.20) than less positively rated clients (M= 4.00). See Figure and Table 2.0.

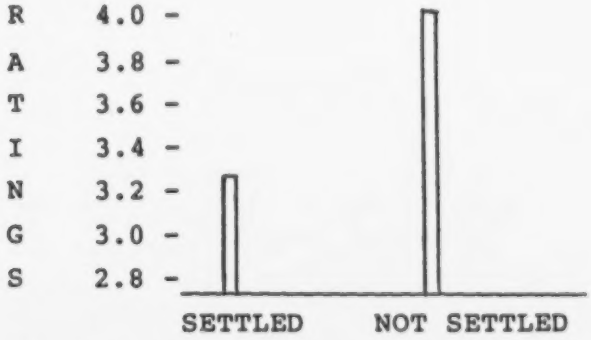

Table 2.0: STATISTICS
df: Between= 1 Within= 61
F Ratio= 4.46, P= .039

Figure 2.0: Mean ratings by Settlement vs. Nonsettlement. 1= Most Positive. Sixth Question analyzed. Did the husband/wife have a positive attitude.

Analysis of the sixth question showed a client gender effect

similar to that observed in the results of the first question analyzed. Husband's attitudes did not vary as a result of whether they reached an agreement (M= 3.27) or did not (M= 3.21). Wives attitudes, however, varied greatly depending on whether they settled (M= 3.14) or did not (M= 5.18). These results were highly significant as can be seen in Table and Figure 2.1.

Table 2.1: STATISTICS
df: Between= 3 Within= 66
F Ratio= 4.64, P= .005

Figure 2.1: Two way interaction of husband vs. wife attitudes with settlement vs. nonsettlement. Sixth Question analyzed. Didthe husband/wife have a positive attitude?.

Results of Analysis by Sex of Attorney:

Differences based on the sex of the attorney were found for the second question analyzed. Husbands rated male (M= 2.63) and female (M= 2.50) attorneys as presenting the mediation services in an almost equally favorable light. Wives rated female attorneys as presenting such services much more favorably (M= 1.67) than male attorneys (M= 4.00). As can be seen in Figure and Table 2.2 these differences approached significance even with a sample size restricted by limitations on identifying the sex of attorneys from incomplete data sets.

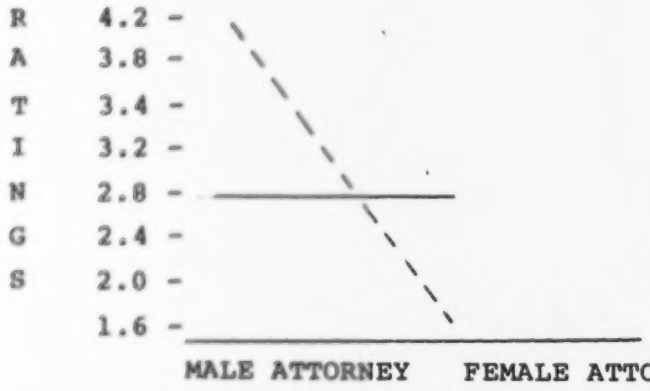

Table 2.2: STATISTICS
df: Between= 1 Within= 43
F Ratio= 2.90, P= .091

Figure 2.2 Two way interaction of husband vs. wife ratings of the favorableness of presentations of conciliation court by male and female attorneys. Second Question analyzed. 1 = most favorable.

Other Results:

Clients were were found to be more likely to be able to settle with their former spouse if their attorneys had more experience with conciliation court. Figure and Table 2.3 show the attorney experience effect to be significant.

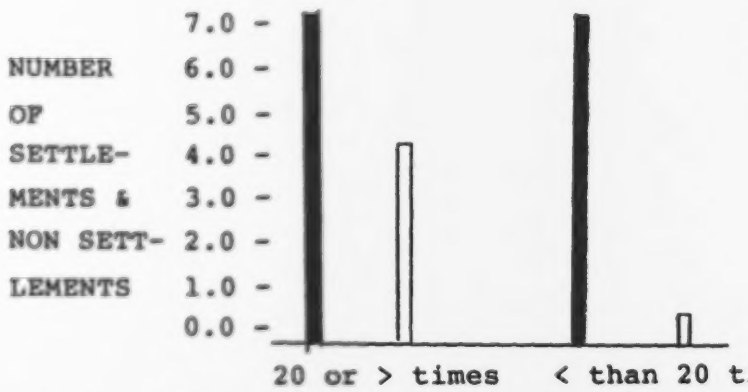

Table 2.3: STATISTICS
df: 2. X2 = 11.19
P < .01

Shaded= NonSettlement
Open = Settlement

Figure 2.3: Number of settlements by number of attorney experiences per year with Conciliation Court.

Clients were asked if their attorneys had adequately informed them about the methods and procedures of conciliation counselors. Clients who reported being more adequately informed were significantly more likely to settle. Figure and Table 2.4 show this result.

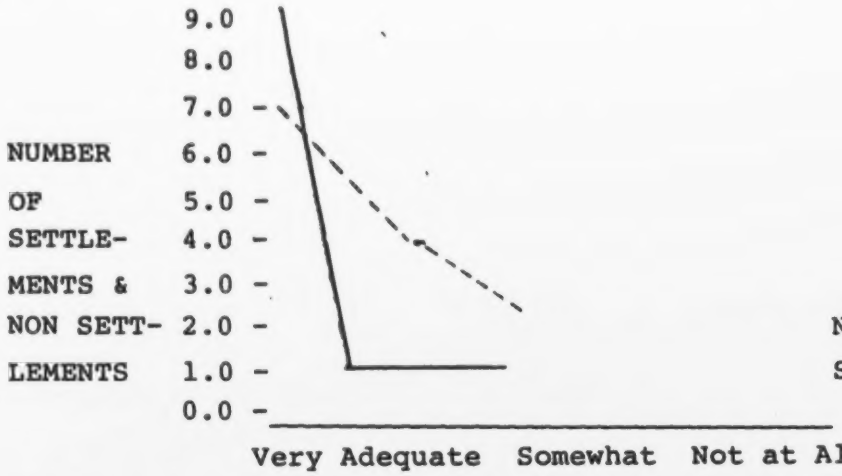

Table 2.4: STATISTICS
df: 2. X2 = 14.55
P < .001

Figure 2.4: Frequency of settlement/ nonsettlement by clients' ratings of how adequately did their attorneys inform them of Conciliation Court procedures.

Based on a restricted sample reconstructed from a combination of mediator reports and client reports male attorneys were more likely to have their clients settle and about half of their clients did so. Only about a third of clients of female attorneys settled.

DISCUSSION

In regard to our first area of inquiry concerning the factors related to parents reaching a settlement most of our obvious predictions were supported. Clients with positive attitudes, well informed by and represented by attorneys with positive attitudes and with high levels of experience with Conciliation Court, are more likely to settle their differences with their former spouse without the necessity of having a judge settle their dispute by court order. Clients seeing their attorneys as having positive attitudes are more likely to have positive attitudes themselves and more likely to negotiate successfully. These findings support our central thesis of the critical importance of the attitudes of attorneys in helping to facilitate the mediation process. The result that attorneys see themselves as more helpful to the process than either their

clients or mediators suggests a need for more attention by attorneys to the quantity and quality of their inputs into the mediation process.

Other findings did not seem obvious at all. We found consistant evidence for sex differences in the responses of male and female clients. Male attitudes are not consistently related to settlements and female attitudes are. We find these results puzzling. Why should husbands views of mediation be uneffected by the results of their negotiations with their ex-wives? Why should husbands feel equally supported by attorneys of either sex while wives feel much more supported by a same sex attorney? Should most females have female attorneys? Note that there was a suggestive difference favoring male attorneys in proportions of settlements reached although our small sample requires this result to be viewed with caution. Same sex representation for female clients may provide only an emotional advantage.

In regard to our second area of inquiry concerning the assumption that levels of satisfaction and settlement should be lower for involuntary participants in the mediation process our Likert scale data can not be directly compared to the yes-no data previously reported by Pearson and Thoennes. However, our generally high levels of client satisfaction with means of 2.18 with settlement and 2.79 without settlement on a nine point scale compares favorably with Pearson and Thoennes (1984) report of 92% satisfaction rates for successful mediating parents and 61% satisfaction rates for unsuccessfully mediating parents. Note too that the average response of clients when asked how likely they would be to use the Conciliation Court if it was voluntary was a positive 3.19 and attorneys were even more positive (M= 1.67). These finding suggest considerable satisfaction with the California process.

Our settlement rate of 40% is lower than that reported for either voluntary participants or previous reports from Los Angeles County Conciliation Court. However, our results are from single sessions and many of our client subjects had been, or will be, involved in multiple sessions (as were Pearson and Thoennes

subjects) and many of them will eventually reach settlements. Therefore our overall results are not significantly inferior to those reached with voluntary participants. Encouraging greater attorney exposure to Conciliation Court procedures and higher levels of positive inputs to clients may result in settlement rates equal or greater than those previously reported for voluntary participants. Certainly nothing in our results suggests that any harmful effects associated with required mediation are great enough to require changing California law.

Strictly speaking these results can only be generalized to the population served by the Van Nuys Court and willing to fill out surveys. That information made available to us by the mediators concerning settlement rates among potential subjects who refused to fill out our surveys suggests they reached settlements about as often as our subjects. Van Nuys is one of the largest of the branch courts in Los Angeles County and serves the entire NorthWest end of the San Fernando Valley with a highly diverse population. Thus our sample may tentatively be identified as fairly representative. For the future we intend to collect systematic information from mediators about all clients appearing for mediation and to eventually extend this research to other courts and populations.

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